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October 15, 2002

VIA ELECTRONIC FILING & FEDERAL EXPRESS

Ms. Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Subject: Application By Qwest Communications International, Inc. For Authorization Under Section 271 Of The Communications Act To Provide In-Region, InterLATA Service In The States Of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington And Wyoming
WC Docket No. 02-314

Dear Ms. Dortch:

The Colorado Payphone Association, the Minnesota Independent Payphone Association and the Northwest Public Communications Council ("Associations")[1] submit these joint comments requesting that the Commission reject Qwest's Section 271 application until Qwest complies with its new services test obligations under Section 276 of the Telecommunications Act and the FCC's ***New Services Order.*** Memorandum Opinion and Order, FCC 02-25, 2002 LEXIS 516 (2002) ***("New Services Order").*** These comments consist of two parts. First, the Associations incorporate by reference their comments filed on July 3, 2002 in WC Docket No. 02-148 and on August 1, 2002 in WC Docket No. 02-189 regarding Qwest's Section 271 applications. These comments described how Qwest has failed to comply with the new services test, how this has harmed payphone competition, and why it is not in the public interest to grant Qwest's Section 271 application.

Second, the Associations file the attached "Request For Inclusion Of Proposed Complaint On The FCC's Accelerated Docket And Pre-Filing Mediation" ("Request"). In the Request, the Associations seek expedited mediation and relief for Qwest's violations of the new

[1] The Associations are trade associations that represent the interests of non-ILEC payphone service providers ("PSPs"). The Associations' PSP members have payphones in each of the states for which Qwest has sought Section 271 approval in this proceeding. The Associations prepared these comments because their members' interests are directly affected by this proceeding.

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services test. The Request offers further evidence demonstrating that the FCC should deny Qwest's Section **271** application in this docket.

Very truly yours,

David L. Rice

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October 8,2002

VIA FACSIMILE & FEDERAL EXPRESS

Alexander Starr
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Subject: Request for Inclusion of Proposed Complaint On The FCC's Accelerated Docket And Pre-Filing Mediation

Dear Mr. Starr:

The Minnesota Independent Payphone Association, the Colorado Payphone Association, and the Northwest Public Communications Council ("Associations")[1] file this letter in response to Qwest Corporation's ("Qwest") failure to comply with its new services test obligations under Section 276 of the Communications Act, the FCC's implementing orders in CC Docket No. 96-128, and the FCC's January 2002 *New Services Order*. *Memorandum Opinion and Order*, 17 FCC Rcd. 2051 (2002) *("New Services Order")*. The Associations request that the FCC (1) use the expedited procedures in 47 C.F.R. § 1.730, et *al.* ("Accelerated Docket"), to process the Associations' proposed complaint, which would be based on the claims in this letter, and (2) schedule and supervise pre-filing settlement negotiations between the Associations and Qwest.

Briefly summarized, the Associations' complaint is that Qwest has violated and continues to violate the Commission's orders in CC Docket No. 96-128 by failing to set its rates for payphone services according to the cost-based principles of the new services test and failing to file required cost-suppod data with the FCC and public utility commissions in all states where it operates, with the possible exception of Colorado?[2] Qwest has a long history of non-

[1] The Associations are trade associations that represent the interests of non-incumbent local exchange carriers ("ILEC") payphone service providers ("PSPs"). The Associations' PSP members have payphones in each of the states in Qwest's territory except Arizona.

[2] On June 14,2002, Qwest filed new PAL rates and fraud protection rates in Colorado in response to the threat of a show cause hearing from the Colorado Commission. The rates were filed as Advice No. 2922,

compliance with the Commission's orders requiring new services test pricing of payphone service and 47 U.S.C. § 276, on which those orders are based.'

The Associations' proposed complaint will request two simple remedies: first, that the FCC direct Qwest to file a federal tariff for the unbundled fraud protection service that Qwest provides to itself and the Associations' members; and second, that the FCC direct Qwest to file cost data supporting its basic payphone line rates in all the states where it operates in accordance with existing new services test requirements as clarified in the *New Services Order.* The Associations will not ask the FCC to set any state tariffed rates. The state commissions can do that once Qwest files the cost support the new service test requires. Forcing Qwest to comply with the FCC's payphone orders is the essential first step to preventing Qwest from continuing to leverage its local exchange market power to benefit its own payphone division and exclude competition in violation of federal law.

I. QWEST HAS REFUSED TO COMPLY WITH THE NEW SERVICES TEST SINCE 1996

Qwest has a long history of delay and non-compliance with the new services test in all the states it serves. To illustrate this situation, this letter first provides an overview of the new services test in the context of Bell Operating Companies' ("RBOC" or "BOC") payphone services, then discusses how Qwest ignored it as the FCC developed and clarified it in numerous orders since 1996.

A. Overview Of The New Services Test

The FCC requires all BOCs, including Qwest, to set their rates for "payphone services" in accordance with the new services test. Payphone services include the "basic payphone line" and "unbundled functionalities," which are features used in payphone operation. ***Order on Reconsideration,*** **11** FCC Rcd. **21,233** at **¶ 163** ***("Order on Reconsideration"); see***

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to be effective July 15,2002. The transmittal letter notes that it is "in compliance with the directives in the Commission's Decision No. C99-497 and FCC Order No. 02-25." ***(emphasis added). See Attachment One.*** "FCC Order No. 02-25" is the New ***Services Order.*** The Colorado Payphone Association is participating in this proceeding because some of its members have payphones in Wyoming and because it is interested in ensuring that Qwest files a federal fraud protectiodcall screening tariff.

[3] Indeed, Qwest virtually admitted in the docket considering Qwest's Section 271 application to serve Colorado, Idaho, Iowa, Nebraska and North Dakota that it has no intention of complying with Section 276 and the new services test in the near future, as explained in Section LE. of their letter.

47 U.S.C. § 276(d).[4] Qwest is a BOC, so its payphone services rates must comply with the new services test.[5] The payphone services relevant to the Associations' complaint are fraud protection features, also known as call screening, and the basic payphone line. Qwest provides two types of basic payphone access lines ("PAL"): "Basic PAL" for use with smart phones and "Smart PAL." which includes central ofice-provided coin control functionality. Qwest's PAL service is equivalent to what other RBOCs call "COCOT" or "COPT" service.

Qwest has two primary duties under the new services test. First, Qwest must calculate its payphone services rates in a manner that does not "recover more than the direct costs of the service, plus 'a just and reasonable portion of the carrier's overhead costs.'" ***New Services Order*** at **¶ 23;** ***see Order on Reconsideration*** at **¶ 163;** ***see also*** **47** C.F.R. **§ 61.49(h).** Direct costs are those directly attributable to a service, like the network access line. Overhead costs are attributable to many different services, like marketing.

Second, Qwest must file tariffs containing rates that meet the new services test. Qwest must file PAL tariffs at state commissions. ***Order on Reconsideration*** at **¶ 163.** Qwest must file tariffs for "[u]nbundled features and functions provided by [BOCs] to their own payphone operations or to others" like fraud protection at state commissions and the FCC. ***New Services Order*** at **¶ 14;** ***see Order on Reconsideration*** at **¶ 163;** ***see Order,*** **12** FCC Rcd. **20,998** at **¶ 18** ***("April 4th Waiver Order").*** Qwest must file "cost-support data" meeting specific requirements along with these tariffs. ***Order,*** **12** FCC Rcd. **21,370** at ¶ **18** ("April ***15th Waiver Order").*** The deadline for these filings was January 15, **1997,** with a required effective tariff date of April **15, 1997.** ***Order on Reconsideration*** at **¶ 163;** ***see April 15th Waiver Order*** at **¶ 2.**[6] Like all BOCs, Qwest bears the burden to prove that its rates comply with the new services test. ***New Services Order*** at **¶ 56.**

E. <u>Owest Never Comulied With The FCC's **1996** Orders Mandating Compliance With The New Services Test</u>

From the beginning, Qwest and its predecessor U S WEST (referred to collectively as "Qwest") dodged the new services test's requirements. In September **1996,** pursuant to Section **276,** the FCC directed BOCs and other local exchange carriers ("LEC") to

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[4] Under Section 276 of the Telecommunications Act, "payphone service" includes "the provision of public or semipublic pay telephones, the provision of inmate telephone service in correctional institutions, and any ancillary services." 47 U.S.C. § 276(d).

[5] Qwest's predecessor US WEST, as a member of the "RBOC Coalition," expressly conceded this fact to the FCC, adding that "ensuring that previously tariffed payphone services meet the new services test. . . should not be *too* problematic." ***April 15th Waiver Order*** at **¶ 14.**

[6] Qwest's predecessor U S WEST sought and obtained a forty-five day waiver of the filing deadline. Id. at **¶ 18.**

eliminate subsidies from their payphone services rates by applying the "Computer III" tariff procedures, which is another name for the new services test, to payphone services:

> [T]ariffs for payphone services must be filed with the Commission as part of the LECs' access services to ensure that the services are reasonably priced and do not include subsidies. . . . [W]e conclude [] that Computer III tariff procedures and pricing are more appropriate for basic payphone services provided by LECs to other payphone providers. Pursuant to Section 276(c), any inconsistent state requirements with regard to this matter are preempted.

Report and Order, 11 FCC Rcd. 20,541 at ¶ 147 *("Report and Order")*. The *Report and Order* was the first of a series of orders in CC Docket No. 96-128 related to the new services test. In its November 1996 *Order on Reconsideration,* the FCC required LECs to file tariffs for basic payphone lines with state commissions and to file tariffs for unbundled functionalities with state commissions and the FCC:

> <u>We require LECs to file tariffs for the basic payphone services and unbundled functionalities in the intrastate and interstate jurisdictions as discussed below. LECs must file intrastate tariffs for these payphone services and any unbundled features they provide to their own payphone services.</u> The tariffs for these LEC payphone services must be: (1) cost based; (2) consistent with the requirements of Section 276 with regard, for example, to the removal of subsidies from exchange and exchange access services; and (3) nondiscriminatory. States must apply these requirements and the <u>Computer III</u> guidelines for tariffing such intrastate services. [Footnote citing 47 C.F.R. Section 61.49(g)(2) and *Report and Order, 6* FCC Rcd. 4524 (1991) ("1991 *ONA Order"),* omitted.] States unable to review these tariffs may require the LECs operating in their state to file these tariffs with the Commission. In addition, LECs must file with the Commission tariffs for unbundled features consistent with the requirements established in the <u>Report and Order</u>. [Footnote omitted.] LECs are not required to file tariffs for the basic payphone line for smart and dumb payphones with the Commission. We will rely on the states to ensure that the basic payphone line is tariffed by the LECs in accordance with the requirements of Section 276.

Order on Reconsideration at ¶ 163 *(emphasis added).* The FCC required RBOCs to meet these requirements by early 1997:

> As required in the <u>Report and Order</u>, and affirmed herein, all required tariffs, both intrastate and interstate, must be filed no later than January 15, 1997 and must be effective no later that April 15, 1997. Where LECs have already filed intrastate tariffs for these services, states may, after considering the requirements of this order, the <u>Report and Order</u>, and Section 276, conclude: 1) that existing tariffs

> are consistent with the requirements of the Report and Order as revised herein; and 2) that in such case no further filings are ired.

Id. Although these paragraphs allowed for the possibility that existing rates could be approved, it was only "after the states [considered] the requirements of this order." Id. The states are not in a position to do so unless the BOC files direct cost data.

Qwest did not y with these requirements. In Ja 1997, t filed revisions to it local tariffs in the states 1 which it provides local vice, but these revisions did not address the new services test From h dpoi f P. , the main eff of the ig was to h the name of the ti g , t Basic PAL" r t t ce li s as rt PAL. Basic I i continued at the rates that were in ff prior to the filing, in most cases exceeding the price for 1FB service, Qwest's basic flat t d business line ce. It e nc app that state commissions gave much tter ion to ing considerations for PAL under the new services test. These revised filings went into effect with littl or no view by the state commissions.

We have no record of what cost support Qwest filed with its January, 1997 t commission filings. Qw generally designates its cost support filing at state commissions as "confidential," t y d the iati access to th cost inf in the absence of a t proceeding and a protective order. Based on th few filings n available, we believe the y cost li p i were to establish the l between the new Smart PAL tariff and the existing Basic PAL rate. We d not believe that Qwest submitted ny data n c studies to pp its er on either Basic or Smart PAL service because we have never seen such cost di in any ju we have examined. Qw t h only filed direct cost data, accounts for half of the PAL rate. Qwest's fili is incomplete without overhead cost data. This explains the lack of active state commission review of Qwest's PAL and fraud i call screening rates in 1997 Accordingly, Q i 1 d its d t to file th cost data necessary to justify its costs and overhead loadings under the new services test.

C. <u>Qv Never li With The FC 1997 d ifyi The New Se es Test</u>

In early 1 7, a group ca the RB Coalition," h h Qwest, sought further clarification of the tariffing requirements applicable t th RBOC In th clarification request, the RBOC aliti n a that the new services test applied only to the unl lled el of the lines d fi "d payphones (Qwest's 'Smart PAL' (A g ist 4, 1997, the FCC issued an order rejecting the RBOC liti i and stating th '[w]e disagree with the RBOC Coalition regarding the applicability of the federal li for state tariffing of p services. *April 4th WaiverOrde* at ¶¶ 7 1.

In response to the *April 4th Waiver Order,* the RBOC Coalition requested a waiver of the FCC's tariffing requirements as applied to the states:

> I am writing on behalf of the RBOC payphone coalition to request a limited waiver of the Commission's intrastate tariffing requirements for basic payphone lines and unbundled features and functions, as set forth in the Commission's orders in the above-captioned docket. . .
>
> As we discussed yesterday, and as I explained in my letter of April 3,1997, none of us understood the payphone orders to require existing, previously-tariffed intrastate payphone services, such as the COCOT line, to meet the Commission's "new services" test. . . . It was not until the bureau issued its "Clarification Of State Tariffing Requirements" as part of its Order of April 4, 1997, that we learned otherwise.

Letter from Michael K. Kellogg to Mary Beth Richards, Deputy Bureau Chief, CC Docket No. 96-128 (April 10,1997) ***(emphasis added).*** Thus, at the time that Qwest filed its Basic and Smart PAL rates in the states in early 1997, Qwest claimed it did not know that the new services test applied to those tariffs.

In response to this request of the RBOC Coalition, the FCC issued an order on April 15, 1997, granting a 45-day waiver of the filing requirements and reiterating that RBOCs must support their rates with cost data:

> Because some LEC intrastate tariffs for payphone services are not in full compliance with the Commission's guidelines, we grant all LECs a limited waiver until May 19,1997, to file intrastate tariffs for payphone services consistent with the "new services" test, pursuant to the federal guidelines established in the Order on Reconsideration, subject to the terms discussed herein. This waiver enables LECs to file intrastate tariffs consistent with the "new services" test of the federal guidelines detailed in the Order on Reconsideration and the Bureau Waiver Order, including cost support data within 45 days of the April 4,1997, release date of the Bureau Waiver Order and remain eligible to receive payphone compensation as of April 15,1997.. .

April 15th Waiver Order at ¶ 2 (emphasis added, footnote omitted). Moreover, Qwest itself, as a member of the RBOC Coalition, acknowledged that it must file cost support to show its intrastate line rates complied with the new services test:

> The RBOC Coalition concedes that the Commission's payphone orders, as clarified by the Bureau Waiver Order, mandate that the payphone services a LEC

> tariffs at the state level are subject to the new services test and that the requisite cost-support data must be submitted to the individual states.

Id. at ¶ 18 ***(emphasis added).***

Once again, Qwest did not comply with the **FCC's** orders. The Associations have found no indication that Qwest **made *any*** additional rate or cost study filings that comply with the **FCC's** new services test methodology with the state commissions after it learned from the ***April 4th Waiver Order*** that Smart and Basic PAL lines needed to be filed with the states in compliance with the new services test. To **our** knowledge, Qwest **has** never justified its overhead loadings for PAL or fraud protectiodcall screening services in any state in accordance with the **FCC's** orders?

Since the 1997 filings there **has** been little or **no** activity in most states regarding Qwest's PAL rates. Rates have been litigated in a couple of Qwest states such **as** Montana and Oregon. In those states Qwest claimed that after the ***April 4th Waiver Order*** and the ***April 15th Waiver Order*** it reviewed its PAL rates under its interpretation of the new service test. Qwest appears to have concluded, in all cases, that its rates were in compliance with the new services test and made no further **state** filings. ***See Attachment*** Two. Yet Qwest's conclusions are based on Qwest's misinterpretation of the **FCC's** orders, which was made abundantly clear when the **FCC** issued the New ***Services Order.*** **For** example, in Oregon Qwest argued that its PAL overhead meets the new services test because its PAL rates equal its business line rates. However, whether PAL rates equal business line rates has nothing to do with the cost-based principles of the new services test. Qwest asserted that it did not need to reduce its PAL rates by the amount of the subscriber line charge ("SLC"), which **as** explained later in **this** letter gives Qwest an unlawful subsidy. Qwest argued that it did not need to provide overhead cost support data to the state commissions to enable them to fulfill their duty to set cost-based rates for PAL and fraud protectiodcall screening. None of **this** is, or ever has been, consistent with **FCC** requirements.

D. Owest **Has** Not Comulied With The **FCC's** 2002 New ***Services Order***

After the 1997 orders in **CC** Docket No. 96-128, collateral litigation began at the **FCC over** the required methodologies and cost support for PAL rates. **See** Docket CCB/CPD No. 00-1, ***In the Matter of Wisconsin Public Service Commission Order Directing Filings.*** **The FCC** issued its final order, the New ***Services Order,*** in January 2002. A number of **LECs**

[7] **As** noted earlier, Colorado **may** be an exception. There, Qwest filed substantially reduced PAL and call **screening rates** in response ***to*** a show cause order issued **by** the Colorado **PUC.** Qwest's cost support was designated confidential, **so the** Associations cannot confirm whether it complies **with the** new services test.

participated in that docket, including Qwest, as part of the LEC Coalition. In the *New Services Order,* the FCC provided clear guidance to the states and the RBOCs regarding how to price PAL. and other payphone services, although most of what the FCC said was not new. *Id.* at ¶ *68.* The FCC also rejected a number of the illogical contentions that Qwest and other BOCs had been making since 1997 to both the Associations and the states. For example, the FCC clarified that Qwest must provide a justification for its overhead loading methodology as well as any deviation from it. *Id.* at ¶ 52. The FCC "reject[ed] the LEC Coalition's argument" that "BOCs are free to apply to payphone line service rates whatever mark-up over direct cost is incorporated in their business line rates, even though business line rates may include subsidies for other BOC services," *Id. at* ¶¶ 55-56. The FCC also allowed states to continue to use Unbundled Network Element ("UNE") loading factors to evaluate the BOCs' overhead allocation for payphone services and also put a cap on the level of overhead. The FCC held that BOCs must reduce their PAL rates by an amount equal to the SLC, to prevent double recovery of costs:

> Therefore, in establishing its cost-based state-tariffed charge for payphone line service, <u>a BOC must reduce the monthly per line charge determined under the new services test by the amount of the applicable federally tariffed SLC</u>. . . . At whatever point in time a state reviews a BOCs' payphone line rates for compliance with the new services test, it must apply an offset for the SLC that is then in effect.

Zd. at ¶ *61 (emphasis udded).* Thus, even if Qwest's existing PAL rates were justified under the new services test in 1997, Qwest's rates would be excessive in an amount at least equal to the SLC, because Qwest has failed to make adjustments equivalent to the SLC. Finally, the FCC reiterated the BOCs' filing obligations with the state commissions:

> Consistent with Commission precedent, the BOCs bear the burden of justifying their overhead allocations for payphone services and <u>demonstrating compliance **with our standards**</u>.

Id. at ¶ *58 (emphasis added).* These are only a few examples of the FCC's efforts to eliminate specious BOC arguments.

Now, faced with these clear mandates, Qwest <u>**still**</u> has not set its payphone services rates according to the new services test and not made the required cost-support filings with the state commissions, and it <u>still</u> uses irrational arguments to support its actions. For example, Qwest recently argued before *an* Oregon state court that CustomNet, a form of call screening/fraud protection, is not subject to the new services test. This is simply wrong, as the FCC has made clear since 1997. The new services test "applies only to payphone specific, network-based, unbundled features and functions provided to others or taken by a LEC's operations, such as answer supervision and <u>call screening</u>. . , ." *April 4th Waiver Order* at ¶ 18 *(emphasis udded).* Qwest also provides CustomNet to its own payphone operations, which means that it is per se subject to the new services test. Finally, Qwest's position is contrary to its own behavior. At one point, Qwest filed new rates and cost support data for CustomNet at the FCC in response to the FCC's new services orders, thereby admitting that CustomNet is a payphone service. ***See Attachment Three.*** When the FCC staff challenged the reasonableness of the proposed rates, Qwest withdrew the filing and has never filed proper rates since that time.

E. In A Recent Section 271 Docket, Qwest Virtually Admitted To The FCC That It Does Not Now Comply And Has No Intention Of Complying With Section 276 And The *New Services Order*

On July 3, 2002, the Associations filed comments on Qwest's Section 271 application related to Colorado, Idaho, Iowa, Nebraska and North Dakota. The Associations' comments demonstrated how Qwest has failed to comply with the new services test. Qwest's Reply Comments never denied this charge and thus effectively admitted that the Associations were correct. ***See Qwest's Reply Comments*** (July 29, 2002). Instead, Qwest responded that it "believes that its retail PAL rates in the application states are reasonable, and disagrees with the Payphone Associations' characterization of Qwest's rates and the Commission's order in ***Wisconsin Public Service Commission."...*** ***Qwest's Reply Comments*** at n. 83. Of course, Qwest's subjective belief *that its* rates are "reasonable" has nothing to do with the cost study and methodology requirements of the new services test. Qwest made this irrelevant statement because <u>it realized that it could not truthfully tell the FCC that its rates comply</u> with the new services test. Moreover, Qwest ignored nearly all of the legal points and citations made by the Associations in the comments and instead focused its reply on a single footnote to the Associations' comments. ***Qwest Reply Comments*** at 90-91. In doing so, Qwest demonstrated that it is unwilling or incapable of rebutting the charge that it has failed to comply with the new services test. Qwest is obviously trying to weasel out of its new services test obligations.

In sum, Qwest has the clear obligation to file PAL rates with the state commissions along with the supporting cost information so the state commissions can determine if the proposed rates are in compliance with Qwest's obligations under 47 U.S.C. § 276 and the FCC's orders interpreting and applying this section. It must also file fraud protection tariffs and cost data with states and the FCC. Its failure to do so violates unambiguous FCC rules and orders.

II. PROPOSED REMEDY

The time is ripe for the FCC to force Qwest to comply with the new services test. During mediation and in their complaint, the Associations will request that the FCC: (1) direct Qwest to file cost data supporting its PAL rates in all the states where it operates, except Colorado, and, if existing state tariffs do not comply with the new services test to file revised tariffs; (2) declare that the ***New Services Order*** requires Qwest to reduce its PAL rates by the amount of the SLC to prevent double-recovery of costs, (3) declare that the new services test has since 1996 unambiguously required Qwest to apply the new services test to fraud protection/call screening services like CustomNet, and (4) direct Qwest to file a federal tariff for fraud protectiodcall screening that is based on Qwest's FCC cost study attached to this letter. *See Attachment* Three. These remedies are appropriate given that Qwest continues to leverage its local exchange market power to benefit its own payphone division and exclude competition in violation of the FCC's orders on payphone issues in CC Docket 96-128.

III. THE FCC SHOULD HANDLE THIS MATTER ACCORDING TO THE ACCELERATED DOCKET PROCEDURES

In determining whether to admit a proceeding onto the Accelerated Docket, FCC staff may consider factors from the following, non-exclusive list:

(1) Whether it appears that the parties to the dispute have exhausted the reasonable opportunities for settlement during the staff-supervised settlement discussions.

(2) Whether the expedited resolution of a particular dispute or category of disputes appears likely to advance competition in the telecommunications market.

(3) Whether the issues in the proceeding appear suited for decision under the constraints of the Accelerated Docket. This factor may entail, *inter alia,* examination of the number of distinct issues raised in a proceeding, the likely complexity of the necessary discovery, and whether the complainant bifurcates any damages claims for decision in a separate proceeding. *See* § 1.722(b).

(4) Whether the complainant states a claim for violation of the Act, or Commission rule or order that falls within the Commission's jurisdiction.

(5) Whether it appears that inclusion of a proceeding on the Accelerated Docket would be unfair to one party because of an overwhelming disparity in the parties' resources.

(6) Such other factors as the Commission staff, within its substantial discretion, may deem appropriate and conducive to the prompt and fair adjudication of complaint proceedings.

47 C.F.R. § 1.730(e). The Associations' complaint filed based on the claims in this letter would meet these criteria. First, the expedited resolution of this dispute would advance competition in the telecommunications market. Section 276 of the Telecommunications Act expressly states that its purpose is "to promote competition among payphone service providers and promote the widespread deployment of payphone services to the benefit of the general public . . . ." 47 U.S.C. § 276(b)(1) (emphasis added). The FCC relied on its statutory authority in Section 276 when applying the new services test to payphone services. Qwest has impeded competition by ignoring its duties under Section 276 and the FCC's implementing orders, as explained above, and has contributed to a decline in the number of payphones deployed in its local service territory.

Second, the issues in this proceeding would be suited for decision under the constraints of the Accelerated Docket. The Association is simply asking the FCC for a legal interpretation of Section 276 and its rules. There would be very limited discovery. There would be no hearings, and the parties could handle all matters through briefing. The remedy the Associations seek would not tax the FCC's resources.

Third, the Associations state a claim that falls within the FCC's jurisdiction. As stated throughout this letter, the Associations' complaint is based on Section 276 and orders in CC Docket No. 96-128.

Fourth, the inclusion of this proceeding on the Accelerated Docket would not be unfair to one party because of an overwhelming disparity in the parties' resources. The Associations are the parties with the least resources, and they are the ones seeking accelerated procedures.

Fifth, there are other factors that make the Associations' grievances appropriate for accelerated treatment. These include the fact that Qwest has long refused all reasonable efforts by the Associations to encourage Qwest's compliance with the new services test and that some state commissions and courts are improperly applying the new services test.

Finally, the Association is willing to participate in pre-filing mediation to explore whether settlement is possible. Based on these factors, the Associations' proposed complaint is ideally suited for the Accelerated Docket.

IV. CONCLUSION

In sum, the FCC's orders over the last five years have required that RBOCs file cost data with the state commissions demonstrating that PAL rates comply with the new services test and with the FCC demonstrating that fraud protection rates comply with the new services test. The new and drastically lower rates Qwest filed recently in Colorado show it is likely that

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Qwest's existing rates in the other states do not comply with the new services test.[8] In the nine months since the issuance of the *New Services Order,* except for Colorado, Qwest has made no effort to file rates that comply with the *New Services Order,* and has expressly refused to file such rates in Oregon. The Associations are now asking the FCC to take some simple actions that will force Qwest to do what the new services test plainly requires. The FCC's Accelerated Docket is the best, and a proper, mechanism to resolve these issues.

Respectfully submitted this 8th day of October, 2002.

MILLER NASH LLP

By: David L. Rice

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[8] Qwest reduced rates dramatically in Colorado. PAL rates went down by over 50%. Screening rates dropped over 90%. See *Attachment One.*

LUDVIGSEN'S LAW OFFICES

By: Gregory Ludvigsen / by D. Rice

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cc: Marlene H. Dortch
Radhika Karmarkar
Robert B. McKenna, Qwest Corporation

ATTACHMENT ONE

ride the light

Qwest.

Advice No. 2922

Denver. Colorado
June 14,2002

The Public Utilities Commission
of the State of Colorado
Logan Tower - office Level 2
1580 Logan street
Denver, Colorado 80203

The accompanying tariff sheets. issued by Qwest Corporation are Sent to you for filing in compliance with the requirements of the Public Utilities Law.

Colo. Sheet No.	P.U.C. Revision No.	Title of Page	Cancels Colo. sheet No.	Cancels P.U.C. Revision No.
		Exchange and Network Services Tariff		
		Colorado P.U.C. No. 20		
		Section 5. Exchange Services		
147	3		147	2
148	3		148	2
148.1	Original		-	-
149	1		149	Original
		Colorado P.U.C. No. 20		
		Prim List		
		Section 5. Exchange Services		
47	3		47	2
48	3		48	2
48.1	Original		-	-
49	1		49	Original

The purpose of this Advice Letter is to reduce rates for intrastate payphone services including the Public Access Line (PAL).PAL Usage Rates, Fraud Protection features, and some nonrecurring rates in compliance with the directives in the Commission's Decision No. C99-497 and FCC Order No. 02-25.

Specifically, Qwest is reducing the monthly recurring rates for Basic Public Access Lines (measured, message, and *flat),* Guestline (measured. message. and flat), *Smart* Public Access Lines (flat *and* message), and Fraud Protection features. In addition, PAL Usage Charges (measured and message) are being reduced. Finally, Qwest is reducing the nonrecurring charge for *the* Fraud Protection features. Qwest is not reducing the nonrecurring charges for the Public Access Lines. as the existing rate is currently below the nonrecurring cost

Qwest has reviewed the Commission decision and FCC order referenced above, and without prejudice to its pending appeal of FCC Decision No. *02-25,* it is making this filing.

Customers will be notified of the rate reductions by direct mail.

It is requested that this filing become effective July 15, 2002. Questions regarding this filing should be directed to Nona Clawson on 303-896-7169.

Kevin R Smith
Colorado Vice President

Attachments

5. EXCHANGE SERVICES

5.5 PUBLIC COMMUNICATIONS SERVICE - COIN AND COINLESS
55.7 PUBLIC ACCESS LINE SERVICE
D. Rates and Charges (Cont'd)

2. Basic Public Access Lines will be provided at the following rates and charges:

	USOC	MAXIMUM NON-RECURRING CHARGE	MAXIMUM MONTHLY ACCESS RATE	MAXIMUM MONTHLY USAGE RATE
• Measured Full Resale, per line	19Q	$70.00	$12.87 (R)	[1]
• Message Full Resale. per line	1MA	70.00	12.87	[1]
• Flat Full Resale. per line	IFY	70.00	14.93	–
• Measured Guestline, per line	I92	70.00	12.99	[1]
• Message Guestline. per line	182	70.00	12.99	[1]
• Flat Guestline, per line	172	70.00	15.05 (R)	–

[1] *See* 4.a., b. and c., as appropriate. (C)

5. EXCHANGE SERVICES

5.5 PUBLIC COMMUNICATIONS SERVICE - COIN AND COINLESS

5.5.7 PUBLIC ACCESS LINE SERVICE

D. Rates and charges (Cont'd)

3. Smart Public Access Lines will be provided at the following rates and charges:

	USOC	MAXIMUM NON-RECURRING CHARGE	MAXIMUM MONTHLY ACCESS RATE
• Flat, per line			
- Outgoing only	5FO	$70.00	$15.82 (R)
- Two-way	5FP	70.00	15.82
• Message, per line			3.76
- Outgoing only	14C	70.00	13.76
- Two-way	1NH	70.00	13.76 (R)

(M)

(M) Material moved to Page 148.1.

5.5 PUBLIC COMMUNICATIONS SERVICE - COIN AND COINLESS
5.5.7 PUBLIC ACCESS LINE SERVICE
D. Rates and Charges (Cont'd)

4. PAL Usage Charges (M)

a. The following Measured usage charges apply for calls placed within the local calling area of the exchanges or tones listed in 5.1.3. Timing of local messages and discount perimeters specified in 5.2.1 apply as appropriate. (C) (C)(M)

	MAXIMUM CHARGE	
• Local Usage Charges		(N)
- First minute or fraction thereof, each call	$0.02	
- Each additional minute or fraction thereof	0.02	

b. Rate Discount and Application Period

TIME PERIOD		MINIMUM DISCOUNT	
• Evening			
- Sunday through Friday	5:00 PM to 11:00 PM	25%	
• Weekend			
- Saturday	8:00 AM to 11:00 PM	50%	
- Sunday	8:00 AM to 5:00 PM	50%	
• Night			
- All days	11:00 PM to 8:00 AM	50%	(N)

c. Message usage charges (T)(M)

	MAXIMUM EACH MESSAGE UNIT	
• Message PAL usage rate	$0.03 (R)	(M)

5.5 PUBLIC COMMUNICATIONS SERVICE - COIN AND COINLESS
5.5.7 PUBLIC ACCESS LINE SERVICE
D. Races and Charges (Cont'd)

5. The following nonrecurring charge for change applies:

- To each line when changing from one PAL service to mother.
- To telephone number changes, at customer's request;
- For temporary transfer of calls, at customer's request;

	MAXIMUM NONRECURRING CHARGE
• Per activity, per CO Public Access Line changed	$25.00

6. Fraud Protection features will be provided to customers who subscribe to Full Resale Basic PAL Service at the following rates and charges.

	USOC	MAXIMUM NONRECURRING CHARGE	MAXIMUM MONTHLY RATE
• Fraud Protection[1]			
- Incoming, per line	PSESI	–	–
- Outgoing, per line	PSESO	$1.17 (R)	$0.12 (R)
- Incoming and Outgoing. per line	PSESP	1.17 (R)	0.12 (R)

[1] The nonrecurring charge will apply when the Fraud Protection features arc provided subsequent to the initial installation of the Basic PAL access line.

5.5 PUBLIC COMMUNICATIONS SERVICE - COIN AND COINLESS

5.5.7 PUBLIC ACCESS LINE SERVICE

A. Terms and Conditions

Refer to 5.5.7 of *the* Exchange and Network Services Tariff for terms, conditions, and application of rates and charges.

B. Rates and Charges

1. Baric Public Access Lines

	USOC	NON-RECURRING CHARGE	MONTHLY ACCESS RATE	MONTHLY USAGE RATE
• Measured Full Resale. per line	19Q	$70.00		
• Message Full Resale, per line	1MA	70.00	12.87	[1]
• *Flat* Full Resale, per line	1FY	70.00	14.93	-
• Measured Guestline, per line	192	70.00	12.99	[1]
• Message Guestline, per line	I82	70.00	12.99	[1]
• Rat Guestline. per line	172	70.00		

(C)

[1] See 3.a.b. and *c.*, as appropriate.

5. EXCHANGE SERVICES

5.5 PUBLIC COMMUNICATIONS SERVICE - COIN AND COINLESS

5.5.7 PUBLIC ACCESS LINE SERVICE

B. Rates and Charges (Cont'd)

2. Smart Public Access Lines

	USOC	NON-RECURRING CHARGE	MONTHLY ACCESS RATE
• Flat, per line			
- Outgoing only	5FO	$70.00	$15.82 (R)
- Two-way	5FP	70.00	15.82
• Message, per line			
- Outgoing only	14C	70.00	13.76
- Two-way	1NH	70.00	13.76 (R)

(M)

(M) Material moved to Page 48.1.

5. EXCHANGE SERVICES

5.5 PUBLIC COMMUNICATIONS SERVICE - COIN AND COINLESS
55.7 PUBLIC ACCESS LINE SERVICE
B. Rata and Charges (Cont'd)

3. PAL Usage Charges (M)

a The following Measured usage charges apply for calls placed within the local calling area of *the* exchanges or zones listed in 5.1.3. Timing of local messages and discount perimeters specified in 5.2.1 apply as appropriate. (C) (C)(M)

- Local Usage Charges
  - Fiat minute or fraction thereof. each call
  - Each additional minute or fraction thereof — *0.02*

b. Rate Discount and Application Period

TIME PERIOD		MINIMUM
• Evening		
- Sunday through Friday	5:00 PM to 11:00 PM	*25%*
• Weekend		
- Saturday	8:00 AM to 11:00 PM	*50%*
- Sunday	8:00 AM to 500 PM	*50%*
• Night		
- All days	11:00 PM to 8:00 AM	50% (N)

c. Message usage charges (T)(M)

	EACH MESSAGE UNIT
• Message PAL usage rate	$0.03 (R) (M)

(M) Material moved from Page 48.

55 PUBLIC COMMUNICATIONS SERVICE - COIN AND COINLESS
5.5.7 PUBLIC ACCESS LINE SERVICE
B. Rats and Charges (Cont'd)

4. Nonrecurring Change Charge

	NONRECURRING CHARGE
• Per activity, per CO Public Access Line changed	$25.00

5. Fraud Protection Features

	USOC	NONRECURRING CHARGE	MONTHLY RATE
• Fraud Protection[1]			
- Incoming, per line	PSESI	–	–
- Outgoing. per line	PSESO	61.17 (R)	$0.12(R)
- Incoming and Outgoing. per line	PSESP	1.17 (R)	0.12 (R)

[1] The nonrecurring charge will apply when the Fraud Protection features arc provided subsequent to the initial installation of the Basic PAL access lie.

ATTACHMENT TWO

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Portland, Oregon 97204
[illegible]-7454
[illegible]-7243 Facsimile
e-mail: [illegible]@qwest.com

Donald K. Mason
Regulatory Director - Oregon

Qwest

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Monday, March 25, 2002

Mr. Phil Nyegaard
Administrator, Telecommunications Division
Oregon Public Utility Commission
550 Capitol Street NE, Suite 215
Salem, OR 97301-2551

Re: Federal Communications Commission ("FCC") Order FCC 02-25

Dear Phil:

This will acknowledge receipt of your letter of February 25, 2002 and inquiry into what steps Qwest Corporation intends to take to comply with the FCC's recent decision (FCC Order 02-25) concerning public access line ("PAL") rates.

As you are undoubtedly aware, FCC Order 02-25 is just the latest chapter in a long history of FCC determinations guiding the implementation of Section 276 of the Telecommunications Act of 1996. The FCC, in its earliest decisions, established various rules and policies governing the payphone industry, which included, among other things, the so-called "new services" test. Qwest has long viewed itself as complying with the "new services" test as that test was initially understood in 1997. At that time, not only did Qwest (then U S WEST) certify compliance with this test to interexchange carriers, but we filed Advice Letter No. 1668 with this Commission, dated January 15, 1997, per the FCC's directive.

This brings us to today. At this point, from what Qwest can discern, FCC Order 02-25 modifies the "new services" test as it previously existed and appears to be at odds with the FCC's prior treatment of payphone service as a retail service. Qwest is in the process of analyzing its current PAL rates, and the underlying cost studies, to determine compliance with the FCC's most recent pronouncement. At the same time, Qwest is disturbed by several findings in that determination and is participating in an appeal, with other RBOCs, to the District of Columbia Circuit Court of Appeals. Qwest anticipates that the FCC's determination concerning PAL rate overhead allocation will be one issue for appeal. Because of this, Qwest's preference would be to postpone Commission consideration of FCC Order 02-25 until after the appellate court weighs in on FCC Order 02-25. While Qwest is cognizant that the appellate process may take some time, Qwest views this approach as being the most efficient use of the Commission's limited resources until a final determination is rendered. Additionally, given the current appeal by the Northwest Public Communications Council to the Marion County Circuit Court concerning Oregon's PAL rates, ensuring consistency would be in the best interest of all parties.

Please contact me should you have any questions.

D.K. Mason

ATTACHMENT THREE

Docket No. D96.12.220
David A. Wick
Exhibit DAW-1

U S WEST COMMUNICATIONS, INC.

TARIFF F.C.C. NO. 5

ACCESS SERVICE

DESCRIPTION AND JUSTIFICATION

PAY TELEPHONE COMPLIANCE

RECURRING COST

CUSTOMNET, per line

A	Total Unit Investment	$	0.22
B.	Capital Expenses		
	Depreciation	$	0.02
	Cost of Money	$	0.01
	Income Tax	$	0.01
	Total	$	0.04
C.	Operating Expenses		
	Maintenance	$	0.01
	Ad Valorem	$	0.00
	Administrative	$	a02
	Business Fees	$	aW
	Total	$	0.03
D.	Total Annual Direct Unit Cost (B + C)	$	0.07
E.	Total Monthly Direct Unit Cost (D/12)	$	0.01
F.	Total Direct Unit Cost/Total Investment (D/A)		0.318